

62A-11-111 Lien provisions.

Provisions for collection of any lien placed as a condition of eligibility for any federally or state-funded public assistance program are as follows:

- (1) Any assistance granted after July 1, 1953 to the spouse of an old-age recipient who was not eligible for old-age assistance but who participated in the assistance granted to the family is recoverable in the same manner as old-age assistance granted to the old-age recipient.
- (2) At the time of the settlement of a lien given as a condition of eligibility for the old-age assistance program, there shall be allowed a cash exemption of \$1,000, less any additional money invested by the department in the home of an old-age recipient or recipients of other assistance programs either as payment of taxes, home and lot improvements, or to protect the interest of the state in the property for necessary improvements to make the home habitable, to be deducted from the market or appraised value of the real property. When it is necessary to sell property or to settle an estate the department may grant reasonable costs of sale and settlement of an estate as follows:
 - (a) When the total cost of probate, including the sale of property when it is sold, and the cost of burial and last illness do not exceed \$1,000, the exemption of \$1,000 shall be the total exemption, which shall be the only amount deductible from the market or appraised value of the property.
 - (b) Subject to Subsection (2)(c), when \$1,000 is not sufficient to pay for the costs of probate, the following expenditures are authorized:
 - (i) cost of funeral expenses not exceeding \$1,500;
 - (ii) costs of terminal illness, provided the medical expenses have not been paid from any state or federally-funded assistance program;
 - (iii) realty fees, if any;
 - (iv) costs of revenue stamps, if any;
 - (v) costs of abstract or title insurance, whichever is the least costly;
 - (vi) attorney fees not exceeding the recommended fee established by the Utah State Bar;
 - (vii) administrator's fee not to exceed \$150;
 - (viii) court costs; and
 - (ix) delinquent taxes, if any.
 - (c) An attorney, who sells the property in an estate that the attorney is probating, is entitled to the lesser of:
 - (i) a real estate fee; or
 - (ii) an attorney fee.
- (3) The amounts listed in Subsection (2)(b) are to be considered only when the total costs of probate exceed \$1,000, and those amounts are to be deducted from the market or appraised value of the property in lieu of the exemption of \$1,000 and are not in addition to the \$1,000 exemption.
- (4) When both husband and wife are recipients and one or both of them own an interest in real property, the lien attaches to the interests of both for the reimbursement of assistance received by either or both spouses. Only one exemption, as provided in this section, is allowed.
- (5) When a lien was executed by one party on property that is owned in joint tenancy with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy in common results, insofar as a department lien is affected, unless the recipients are husband and wife. When recipients are husband and wife who own property in joint tenancy with full rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a department lien might be affected, and settlement of the lien shall be in accordance with the provisions of Subsection (4).

- (6) The amount of the lien given for old-age assistance shall be the total amount of assistance granted up to the market or appraised value of the real or personal property, less the amount of the legal maximum property limitations from the execution of the lien until settlement thereof. There shall be no exemption of any kind or nature allowed against real or personal property liens granted for old-age assistance except assistance in the form of medical care, and nursing home care, other types of congregate care, and similar plans for persons with a physical or mental disability.
- (7) When it is necessary to sell property or to settle an estate, the department is authorized to approve payment of the reasonable costs of sale and settlement of an estate on which a lien has been given for old-age assistance.
- (8) The amount of reimbursement of all liens held by the department shall be determined on the basis of the formulas described in this section, when they become due and payable.
- (9) All lien agreements shall be recorded with the county recorder of the county in which the real property is located, and that recording has the same effect as a judgment lien on any real property in which the recipient has any title or interest. All such real property including but not limited to, joint tenancy interests, shall, from the time a lien agreement is recorded, be and become charged with a lien for all assistance received by the recipient or his spouse as provided in this section. That lien has priority over all unrecorded encumbrances. No fees or costs shall be paid for such recording.
- (10) Liens shall become due and payable, and the department shall seek collection of each lien now held:
 - (a) when the property to which the lien attaches is transferred to a third party prior to the recipient's death, provided, that if other property is purchased by the recipient to be used by the recipient as a home, the department may transfer the amount of the lien from the property sold to the property purchased;
 - (b) upon the death of the recipient and the recipient's spouse, if any. When the heirs or devisees of the property are also recipients of public assistance, or when other hardship circumstances exist, the department may postpone settlement of the lien if that would be in the best interest of the recipient and the state;
 - (c) when a recipient voluntarily offers to settle the lien; or
 - (d) when property subject to a lien is no longer used by a recipient and appears to be abandoned.
- (11) When a lien becomes due and payable, a certificate in a form approved by the department certifying to the amount of assistance provided to the recipient and the amount of the lien, shall be mailed to the recipient, the recipient's heirs, or administrators of the estate, and the same shall be allowed, approved, filed, and paid as a preferred claim, as provided in Subsection 75-3-805(1)(e) in the administration of the decedent's estate. The amount so certified constitutes the entire claim, as of the date of the certificate, against the real or personal property of the recipient or the recipient's spouse. Any person dealing with the recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount of the existing lien against that real or personal property. That amount, however, shall increase by accruing interest until time of final settlement, at the rate of 6% per annum, commencing six months after the lien becomes due and payable, or at the termination of probate proceedings, whichever occurs later.
- (12) If heirs are unable to make a lump-sum settlement of the lien at the time it becomes due and payable, the department may permit settlement based upon periodic repayments in a manner prescribed by the department, with interest as provided in Subsection (11).

- (13) All sums so recovered, except those credited to the federal government, shall be retained by the department.
- (14) The department is empowered to accept voluntary conveyance of real or personal property in satisfaction of its interest therein. All property acquired by the department under the provisions of this section may be disposed of by public or private sale under rules prescribed by the department. The department is authorized to execute and deliver any document necessary to convey title to all property that comes into its possession, as though the department constituted a corporate entity.
- (15) Any real property acquired by the department, either by foreclosure or voluntary conveyance, is tax exempt, so long as it is so held.

Amended by Chapter 366, 2011 General Session